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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERSMIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCEIN THE MATTER OF THE FORMAL
COMPLAINT OF ACCIPITER
COMMUNICATIONS, INC. AGAINST
VISTANCIA, LLC, AND COX ARIZONA
TELCOM, LLC.

DOCKET NO. T-03471A-05-0064

PROCEDURAL ORDER**BY THE COMMISSION:**

On January 31, 2005, Accipiter Communications, Inc. ("Accipiter") filed with the Arizona Corporation Commission ("Commission") a formal complaint against Vistancia Communications, LLC and Shea Sunbelt Pleasant Point, LLC, both of which are now known as Vistancia, LLC ("Vistancia"), and Cox Arizona Telcom, LLC ("Cox"). The complaint arose out of Vistancia's controlling telecommunications providers' access to the Vistancia development in Peoria, Arizona, through a private easement arrangement and assessment of an access fee. Accipiter alleged that Cox and Vistancia had created the private easement arrangement to unlawfully stifle competition.¹ This docket remains open because, although Accipiter has entered into a Settlement Agreement with Vistancia and Cox, the Commission's Utilities Division Staff ("Staff") has continued to pursue the allegations against Cox.

An evidentiary hearing was held in this matter on August 28-31, 2006, and on May 14, 2007. The issue of attorney-client privilege for communications between Linda Trickey, Cox's senior in-house counsel, and Cox employees regarding the private easement arrangement with Vistancia and the related access fee arose during the hearing, as did the issue of implied waiver of the privilege.² At Cox's request and with the consent of both Cox and Staff, the Administrative Law Judge ("ALJ") continued the hearing pending resolution of the attorney-client privilege issue and encouraged Cox

¹ Accipiter alleged that there was a scheme crafted by Vistancia and Cox to monopolize the telecommunications market within the Vistancia development by intentionally excluding competition and advancing the financial interests of Vistancia at the expense of customer choice. Accipiter also alleged that the Vistancia and Cox scheme supplanted the jurisdiction of the Commission.

² For additional procedural history, please see the March 27, 2008, Procedural Order in this matter.

1 and Staff, in the meantime, to continue settlement discussions. (Tr. at 908, line 15 through Tr. at 910,
2 line 5.)

3 On February 13, 2008, Staff filed a Motion for *In Camera* Inspection of Documents Claimed
4 to Be Attorney-Client Privileged. Staff included with its Motion a list of documents requested.

5 Cox filed its Response to Staff's Motion on March 18, 2008. In its Response, Cox stated that
6 it will comply if the ALJ orders an *in camera* review of the documents, although Cox asserted that its
7 compliance would not waive any rights now or in the future, including its position that it has not
8 waived the attorney-client privilege in this matter. Cox requested that, if *in camera* review is
9 ordered, Cox be afforded a three-week period to compile and submit the documents.

10 On March 27, 2008, a Procedural Order was issued requiring Cox, by April 21, 2008, to
11 produce, under seal, for *in camera* inspection by the ALJs, all of the documents identified by Staff in
12 its Motion along with any additional documents that include communications between Ms. Trickey
13 and any Cox employee or agent, or between Cox employees or Cox employees and agents, regarding
14 the legality of the private easement arrangement and the related access fee and for which Cox asserts
15 the attorney-client privilege. Cox was also ordered to produce, file with Docket Control, and supply
16 to Staff, by April 21, 2008, a complete list of the documents provided for *in camera* inspection that
17 provided prescribed information for each separate document ("document log"). Staff was ordered to
18 file any objections to Cox's assertion of privilege for any of the documents identified in the document
19 log by May 12, 2008.

20 On April 15, 2008, Cox requested an extension of the April 21, 2008, deadline for filing its
21 documents under seal and the document log. Cox specifically requested to have its deadline extended
22 from April 21, 2008, to May 12, 2008, and requested that the date for Staff's objections be extended
23 from May 12, 2008, to May 27, 2008. Cox requested the extension because of its counsel's schedule
24 and the volume of documents to be provided.

25 Cox's request for an extension of its deadline is reasonable and should be granted. Cox's
26 request to have Staff's deadline extended is also reasonable, although it is appropriate to extend
27 Staff's deadline by the same period as Cox's deadline, rather than the shorter period requested by
28 Cox.

1 IT IS THEREFORE ORDERED that Cox's **deadline** to produce under seal, for *in camera*
2 inspection by the ALJs the documents described in the March 27, 2008, Procedural Order and its
3 deadline to file with Docket Control and supply to Staff the document log is **hereby extended from**
4 **April 21, 2008, until May 12, 2008.**

5 IT IS FURTHER ORDERED that Staff's **deadline** to file any objections to Cox's assertion of
6 privilege for any of the documents identified in the document log is **hereby extended from May 12,**
7 **2008, to June 2, 2008.**


8 IT IS FURTHER ORDERED that Cox and Staff shall ensure that their respective filings
9 and submissions comply in all respects with the substantive requirements of the March 27,
10 2008, Procedural Order.

11 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
12 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
13 *pro hac vice*.

14 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized
15 Communications) applies to this proceeding and shall remain in effect until the Commission's
16 Decision in this matter is final and non-appealable.

17 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
18 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

19 DATED this 16th day of April, 2008.

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23 SARAH N. HARPRING
24 ADMINISTRATIVE LAW JUDGE
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Copies of the foregoing mailed/delivered
this 16th day of April, 2008, to:

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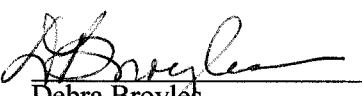
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By: 
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